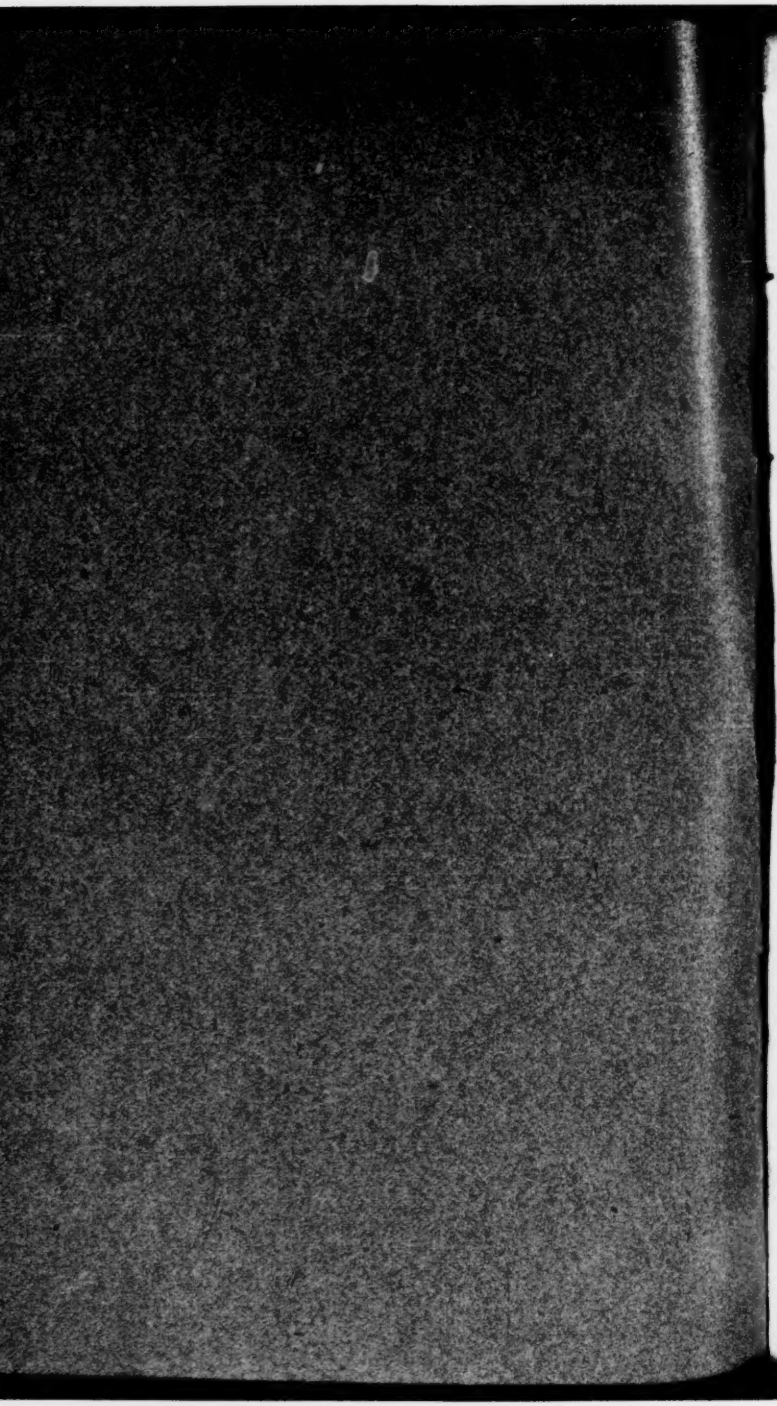
APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

FILED SEPTEMBER 16, 1898.

(16,991.)



(16,991.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 406.

THE FIDELITY TRUST AND SAFETY VAULT COMPANY
APPELLANT,

vs.

THE CITY OF LOUISVILLE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit "A"—Agreement between the banks, city, and commissioners of sinking fund of Louisville	10	12
Subpœna	14	15
Marshal's return	14	15
Stipulation as to pleadings	15	16
Demurrer of City of Louisville	15	16
Answer of City of Louisville	18	17
Order taking motion for injunction and demurrers under advisement	25	26
Order continuing injunction	25	26
Order filing amended bill, &c	25	26
Amended bill	26	27
Demurrer to amended bill	32	30
Decree	33	31
Assignment of errors	33	31
Appeal bond	34	32
Stipulation waiving citation	36	33
Clerk's certificate	37	33

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1898.

1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Louisville, on Monday, February 21, A. D. 1898.

Present: Honorable John M. Harlan, circuit justice, and Honorables Wm. H. Taft and H. H. Lurton, circuit judges.

FIDELITY TRUST & SAFETY VAULT COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendant. } No. 6582.

Be it remembered that heretofore, to wit, on the 17th day of April, 1897, came the complainant, by counsel, and filed in the clerk's office of our said court its bill of complaint against the above-named defendant.

The bill of complaint above referred to is as follows:

2 To the judges of the circuit court of the United States for the sixth circuit and district of Kentucky:

Fidelity Trust & Safety Vault Company, a citizen and resident of the State of Kentucky, brings this bill against The City of Louisville, a municipal corporation of the State of Kentucky; and thereupon your orator complains and says that it is a corporation duly chartered and organized under the laws of the Commonwealth of Kentucky by an act of the General Assembly of said Commonwealth, entitled, "An act to incorporate the Fidelity Trust Company, approved on the 22 day of April, 1882, and your orator has all the powers granted by said charter and the several amendments thereof, among which is the power to contract and to be contracted with, to sue and be sued, and generally to do such banking business as is usually granted to such corporations. The amendments to the charter of your orator were adopted April 12th, 1888, — May 5, 1890. An amendment was also adopted March 4, 1884, by which the corporate name was changed from Fidelity Trust Company to the Fidelity Trust & Safety Vault Company.

Your orator says it is and has been since its organization engaged in the banking business in the city of Louisville, Ky.

Your orator respectfully shows that one Samuel H. Stone is now the auditor of public accounts for the Commonwealth of Kentucky, having been duly elected and qualified according to law.

The defendant, The City of Louisville, is a municipal corporation deriving all its rights and powers from a statute law of Kentucky duly passed for the government of cities of the first class.

Your orator says it is and has been since its organization *been* engaged in the banking business in the city of Louisville, Kentucky. The defendant Samuel H. Stone is the auditor of public accounts for the Commonwealth of Kentucky, the defendant Charles Finley is the secretary of state, and the defendant George W. Long is the

treasurer of the State, all of them having been duly elected to their respective offices, and having qualified as provided by law.

The defendant, The City of Louisville, is a municipal corporation deriving all its rights and powers from a statute law of Kentucky duly passed for the government of cities of the first class.

Par. 2. Your orator shows that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said Commonwealth governing the taxation of banks was very unsatisfactory in this, to wit: that there were four banks chartered by said State prior to the year 1856, which held charter contracts beyond the power of the State to repeal. Said banks are hereafter referred to as the old banks. These banks had a large capital and divers branches, and came into immediate and direct competition with the other banks of the State. The court of appeals of Kentucky, the court of final resort in that State, had several times construed said contracts and held that they were beyond the power of legislature to repeal. By their said contracts with the State each of these banks could discharge itself of all taxation—State and local, such as county, city and district—by the payment of fifty cents on each share of its stock of the par value of $100, and this payment of fifty
3 cents on each share of stock the Commonwealth was by its contract bound to receive in full payment of its claim for taxation upon all the different kinds of property of said bank.

In addition to this complication with the old banks, the national banks in the State were claiming the right to be put upon a footing as to taxation upon an equality with the four old banks, and as the capital of the four old banks was about equal to the combined capital of all the other State banks, the courts of Kentucky had held that they could not be subjected to a heavier burden of taxation.

No other bank in the State could be taxed at a materially higher rate without practically driving it out of business, as it would thereby be unable to compete with the said four old banks and the national banks, and for this reason by express provisions of the respective charters granted by the State, as by the general law, all the banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks. The State being dissatisfied with the existing tax rate against the banks and similar corporations desired to increase the rate, but much desired, for the reason above referred to, to have the tax rate on all the banks in the State uniform, which could only be done by exempting them from local taxation and increasing their tax to the State. And as it was not within the power of the State to increase the tax rate against the old banks except with their consent, they were asked in the interest of uniformity to consent, and, in the interest of uniformity and to secure to the banking interests in the State repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner hereafter described to the scheme of taxation hereafter more particularly described. Accordingly the General Assembly of the Commonwealth of Kentucky, as a part of its revenue bill, entitled, "An act to

amend the revenue laws of the Commonwealth of Kentucky," approved May 17, 1886, enacted provisions concerning the taxation of banks substantially as follows:

1st. It declared that the shares of stock in State and national banks, and other institutions of loan or discount, and in all corporations required by law to be taxed on their capital stock, shall be taxed seventy-five cents on each share thereof equal to one hundred dollars, or on each one hundred dollars of stock therein owned by individuals, corporations, or societies, and said banks, institutions, and corporations, shall, in addition, pay upon each one hundred dollars of so much of their surplus, undivided surplus, undivided profits, or undivided accumulations as exceeds an amount equal to ten per cent. of their capital stock, the same rate of taxation that is assessed upon real estate, which shall be in full of all tax, State, county and municipal. For the purpose of ascertaining such surplus, undivided profits, or undivided accumulations, it is provided that the auditor might at his option investigate the books of the bank, institution or corporation. And it is further provided that any officer having in charge the affairs of such bank, institution, or corporation who shall refuse, when duly called upon for the purpose, to allow his books to be investigated, shall be subject to indictment in the Franklin circuit court, or the circuit court of the county wherein said bank, institution or corporation shall be located, and, upon conviction, shall be fined not less than five hundred dollars and not more than one thousand dollars.

It is further provided that the cashier of the bank, and the treasurer of any other institution or corporation, whose stock is taxed, shall, on the first day of July in each year, report to the auditor of public accounts the true amount of the capital stock, and the true amount of surplus, undivided profits, or undivided accumulations, and how or in what said surplus, undivided profits, or undivided accumulations *is* invested, and pay into the treasury the amount of tax due.

It is further provided that if such tax be not paid, the cashier and his sureties shall be liable for the same and twenty per cent. upon the amount, and any State bank, institution, or corporation shall thereby forfeit the privilege of its charter.

The fourth section of said act is as follows:

"That each of said banks, institutions, and corporations, by its proper corporate authority, with the consent of a majority in interest of a quorum of its stockholders, at a regular or called meeting thereof, may give its consent to the levying of said tax, and agree to pay the same as herein provided, and to waive and release all right under the acts of Congress or under the charters of the State banks to a different mode or smaller rate of taxation, which consent or agreement to and with the State of Kentucky shall be evidenced by writing under the seal of such bank and delivered to the governor of this Commonwealth; and upon such agreement and consent being delivered, and in consideration thereof, such bank and its shares of stock shall be exempt from all other taxation whatsoever,

so long as said tax shall be paid during the corporate existence of such bank."

By the fifth section it is declared that said banks may take the proceeding authorized by section 4 of this act at any time until the meeting of the next General Assembly; provided, they pay the tax provided in section 1 from the passage of this act. Said act also provides in effect that said banks accepting the provisions of said bill shall pay taxes for municipal and county purposes on any real estate or building owned and used by said banks or corporations for conducting their business.

4 Your orator further shows that thereafter within the time allowed by said act, to wit, during the year 1887, and before the meeting of the next General Assembly, it caused the question of the acceptance or non-acceptance of the State's proposition to be submitted to a quorum of its stockholders duly assembled for the purpose of considering said question; and after due consideration its stockholders representing more than a majority of all its stock outstanding, consented to the levying of said tax, and agreed to pay the same as in the said law provided, and to waive and release all its rights under its charter to a different mode or a smaller rate of taxation, and said consent and agreement to and with the State of Kentucky was evidenced by writing under the corporate seal of your orator, which was delivered to the governor of the Commonwealth and from that time thenceforward continuously to the present time your orator regularly and promptly paid its taxes each year in accordance with and as provided by its said contract, except as hereinafter explained.

Your orator through its cashier made its report in accordance with said law, and paid into the State treasury on the first day of July, 1887—the said law not having gone into effect until September 14, 1886—the full tax required by said act, and in conformity with said act has made its report in proper form to the auditor of public accounts on the first day of July in each and every year up to this time.

Your orator shows that for each of the years, including 1887, down to the present time it has regularly paid its taxes to the city of Louisville on the house in which it does and has done business.

Your orator shows that in July, 1893 and 1894, it made its report as usual to the auditor of public accounts in the manner prescribed by the act of May 17, 1886, known as the "Hewitt bill," and tendered the amount of the tax due thereunder, to wit, seventy-five cents on each share of its capital stock equal to one hundred dollars, and also in accordance with said act tendered to said auditor the taxes at the current rate, then assessed upon real estate upon so much of its surplus, undivided surplus, undivided profits or accumulations as exceeded an amount equal to ten per cent. on its capital stock, but said auditor refused to accept the money so tendered, or to receive any more than the current rate of forty-two and one-half cents on the hundred dollars on the valuation fixed by the State board of valuation and assessment provided for in the act of November 11,

1892, hereafter more particularly set out. The amount so demanded by the auditor your orator paid under protest.

Afterwards on the 1st day of June, 1895, the court of appeals of Kentucky decided in favor of the banks the litigation hereinafter mentioned, and thereafter the auditor of the State demanded from your orator and each of the other banks in the State, for the years 1893 and 1894 the difference between what had been paid under the act of November 11, 1892, and what should have been paid under the act of May 17, 1886, known as the "Hewitt bill;" and your orator promptly complied with said demand and paid said difference into the treasury of the State, and for the years 1895 and 1896 your orator made report and payment under the "Hewitt bill" and in accordance with its provisions; and so it is that your orator respectfully shows that it has regularly since and including 1887, and up to the present time reported to the auditor in the manner provided by said act of May 17, 1886, and has regularly, and within the prescribed time paid its taxes thereunder, except, and for the causes mentioned, during the period above described.

Your orator respectfully shows and submits to this honorable court that the act hereinbefore specifically set out, adopted by the General Assembly of Kentucky on the 17th of May, 1886, and your orator's formal acceptance thereunder as provided by said statute, and your orator's payment thereunder and in accordance therewith to the State of a sum much in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and your orator and its stockholders upon the other part, continuing during the legal existence of your orator's corporate life, and the State was equally with your orator bound thereby, and had no right to retire therefrom.

Par. 3. Your orator respectfully shows that notwithstanding the contract thus formally entered into, and which it was agreed should subsist during the charter life of your orator, the State of Kentucky on the 11th of November, 1892, unmindful of its contract obligations with your orator and others, through its General Assembly undertook to tax all of the banks in the State in a manner different from that prescribed in the contract hereinbefore set out, and also to subject them to all manner of local taxation, the total tax for State and municipal purposes thus provided for being very much more onerous than the tax provided for under the "Hewitt bill" approved May 17, 1886. As applied to your orator the tax under the act of November 11, 1892, before referred to will exceed the tax which it would have to pay under the "Hewitt bill" by $20,000. The particular method of assessment and taxation prescribed in the act of November 11, 1892, and now attempted to be enforced, will be hereafter more at length set out.

Par. 4. Your orator shows that early in the year 1894, and before the 4th of May, 1894, the defendant, The City of Louisville, claiming to act under the authority of the statute governing cities of the first class, and of its ordinances adopted in pursuance thereof, demanded of your orator and of every other bank and trust company in the

city of Louisville, a tax equal to four per cent. of its gross receipts, and this demand being refused, legal proceedings were commenced in the city court of Louisville in behalf of the city against all of said banks and trust companies, including your orator. At that date the tax upon the gross receipts of the banks, if enforceable, was payable to the sinking fund of the city of Louisville, and with a view of embar-assing the sinking fund of the city as little as possible, the banks through their committee, held a meeting with the commissioners of the sinking fund, and it was agreed between the city of Louisville and its sinking fund commissioners upon the one part, and the banks and trust compa ies of the city of Louisville including your orator upon the other, that pending the litigation which by the agreement was to be inaugurated, and without prejudice to the right of the banks, they would make payments and loans to said sinking fund as follows:

First. The sinking fund was to accept from each of said banks and trust companies a payment equal to the difference between the amount which the banks and trust companies would have to pay to the State under the present law and the amount which they would be required to pay for State taxes under the provisions of the "Hewitt bill." This sum it was provided should be an actual payment and not be repaid under any circumstances, but its payment was not in any manner, or to any extent to prejudice the banks or trust companies paying it, or be taken as a waiver of any any legal right which they might have in the premises.

Second. In addition to making the above payments the banks and trust companies, save those which were to be selected to test the question involved, should each lend to the sinking fund a sum which added to said payment would equal four per centum of its gross earnings during the year 1893, and the sinking fund would execute for said loans its obligations agreeing to repay the same with interest at four per centum per annum, when, and if, it should be finally adjudged by the court of last resort that said banks or trust companies were not liable to pay the license fee, required by the ordinance aforesaid, but if it should be finally adjudged that they were liable to pay said license fee, then said loan should be taken and deemed as a payment of said license fee, and the obligation to repay same should be void.

Third. It was agreed that the banks or companies selected to test the questions involved would each lend the sinking fund a sum equal to four per centum of the gross earnings for the year 1893, and would receive therefor the obligations of the sinking fund as above described.

Fourth. It was further agreed that that arrangement was entered into with the understanding that the banks and companies would institute without delay, and diligently prosecute such actions as might be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund would not prosecute them or any of them for doing business without license.

The substance of this agreement was spread at large upon the

records of the sinking fund, and a copy thereof is filed herewith as part hereof marked A.

As further *evidence* of the contract at that time made between the City of Louisville and its sinking fund, and the various banks and trust companies, including your orator of the city, it was agreed in writing by said parties in substance that in order to effectually test the question as to all of said banks and trust companies they were divided into three classes, it being understood that all who accepted the provisions of the said "Hewitt bill" would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It was understood that the trust and title companies which had accepted the provisions of the "Hewitt bill" would fall in class B above named.

It was further agreed that if any bank in any class should eventually fail to establish the existence and validity of the contract which it was claimed was made under the "Hewitt bill," that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes. And it was also agreed that if any bank of any class should succeed in establishing the contract and the validity thereof under the "Hewitt bill" that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the "Hewitt bill."

6 This agreement was signed by the president of the sinking fund, and by the attorney for the city under the authority and direction of the mayor and the board of sinking fund commissioners, and by the counsel who represented the banks in said litigation.

On the faith of this agreement as outlined in the resolution spread upon the records of the sinking fund, and more at large set out in the contract duly executed, the various banks and trust companies (including your orator) of the city of Louisville paid into the sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the minutes of the sinking fund commissioners heretofore referred to; and at a still later date, and in further reliance upon said agreement, the said banks and companies, including your orator except those already involved in the test cases, paid the whole amount of the taxes claimed against them by the city of Louisville without reservation, until the question should be finally disposed of. This was done without prejudice to the rights of the banks and trust companies, and was not to be deemed a waiver by the banks or trust companies of any of their claimed rights, but was done to prevent confusion from coming into the management of the sinking fund, as the taxes against the banks claimed by the city had been transferred to the sinking fund of said city. It was agreed that these payments should not last longer than the final decision in favor of the banks if such decision should be rendered.

A copy of the contract aforesaid with the minute aforesaid is filed herewith as part hereof marked A.

The amount paid by the banks and trust companies to the city under said agreement is over $150,000, no part of which has ever been refunded by said city.

Par. 5. Your orator further shows that with a view of testing every phase of the question so that the decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to the contract aforesaid. The Bank of Kentucky, whose charter was granted prior to 1856, during which year a general law was adopted reserving the right to amend or repeal all charters or amendments thereafter granted unless a contrary intent was *was* plainly expressed, brought suit in which it represented itself as the Bank of Louisville, which also had a charter granted prior to 1856. The Louisville Banking Company had a charter from the State granted subsequent to the year 1856 but before the passage of the "Hewitt bill," and it brought a suit in which it represented all the banks and trust companies in the city whose charters were granted by the State since 1856; and the Third national bank also brought its suit, in which it represented all the national banks of the city.

In these suits each of the banks set up the adoption of the "Hewitt bill" with its various provisions, and the fact that each of them had assembled their stockholders to consider the question whether or not it would accept the provisions of the "Hewitt bill," and the further fact that the said stockholders, a majority of all of them acting in the affirmative, had accepted the provisions of the "Hewitt bill," and had certified the same to the governor, and had thereafter regularly made the reports and payments as provided for in the "Hewitt bill," and it was asserted in each case that the act of May 17, 1886, known as the "Hewitt bill," together with the action of each bank thereon accepting the same, constituted a valid and irrepealable contract, lasting during the charter life of each bank and that the action of the State in undertaking to subsequently tax the banks by a different method and in a more onerous way, was in violation of the Federal Constitution, which forbids a State bank from passing a law impairing the obligation of a contract. Such proceedings were had that the Jefferson circuit court adjudged that the Bank of Kentucky had a contract in the "Hewitt bill" which was irrepealable, but that the Louisville Banking Company and the Third national bank did not have, and the petitions of these two banks were each dismissed. From the judgment of the Jefferson circuit court the city of Louisville prosecuted its appeal against the Bank of Kentucky; and the Louisville Banking Company and the Third national bank each prosecuted its appeal against the city of Louisville. These suits though really against the city of Louisville were each brought against R. H. Thompson, judge of the police court of the city of Louisville, that being the method pointed out by the law governing cities of the first class, as a means of testing the validity of any city ordinance.

In the court of appeals, which is the court of final resort in the

State of Kentucky, the city of Louisville was represented by its corporation counsel and the Commonwealth of Kentucky appeared by its attorney general and by oral argument and printed brief opposed the contention of the several banks. The city and the State through their respective official attorneys both insisted that none of the banks or trust companies had any contract under the "Hewitt bill," and that if they did have at one time, the State had a perfect right to retire from it under the sixth section of the article relating to banks, which declared that this "act shall be subject to the provisions of section 8, chapter 68 of the General Statutes."

The only questions which were submitted to the circuit court and the court of appeals were—

1st. Whether or not the "Hewitt bill," coupled with the acceptance thereof by the several banks and trust companies, and the payment of taxes thereunder, constituted a contract between the State and the several banks and trust companies.

7 2d. If it did, then what was the extent of the duration of that contract.

It was contended by the banks and trust companies, first, that they did have a contract growing out of the acceptance of the "Hewitt bill," and second, that the contract was irrepealable by the State and lasted throughout the corporate existence of the several banks and trust companies. These being the only questions involved, the court of appeals of Kentucky after a most elaborate argument, and the most thorough and painstaking consideration, determined and adjudged in accordance with the contention of the several banks and trust companies,

First. That the "Hewitt bill" and the acceptance thereof and the action thereunder by the banks did constitute a contract between the banks and the State, and,

Second. That this contract was irrepealable in its nature and lasted throughout the charter existence of the several banks and trust companies.

A certified copy of the transcript in the case of Louisville Banking Company *vs.* R. H. Thompson, judge of the police court of Louisville, is filed with the bill of said bank in this court against Samuel H. Stone, &c., and by reference is made part hereof.

Upon the issuing of said mandate in the cases of the Louisville Banking Company and Third national bank judgments were entered in the Jefferson circuit court, in pursuance to said mandate and the respective prayers of said petitions.

Certified copies of said orders are also filed with the transcript of the records in the cases above named. Wherefore your orator pleads and relies upon said former adjudication as a bar to any further claim by or on behalf of the city of Louisville against your orator for taxes except under and in accordance with said act of May 17, 1886, known as the "Hewitt bill."

Par. 6. Your orator further shows that by an act passed by the General Assembly of the Commonwealth of Kentucky on the 11th of November, 1892, it is provided in substance that every incorporated bank

and trust company shall in addition to other taxes imposed on it by law annually pay a tax on its franchise to the State and a local tax thereon to the county, incorporated city, town and taxing district where its franchise may be exercised. The auditor, treasurer and secretary of state *was* by said act constituted a board of valuation and assessment for fixing the value of said franchise. It is further provided that in order to determine the value of the franchise the banks and trust companies shall each file reports on or before the first day of March in each year, which reports shall be made up and include the 31st day of the preceding December. These reports it is provided shall be verified by the president, cashier, secretary, treasurer or manager or other chief officer, in such form as the auditor may prescribe, showing the following facts, viz: The name and principal place of business of the company; the amount of capital stock; the number of shares; the amount of stock paid up; the nominal and real value thereof; the highest price at which such stock was sold at a *bona fide* sale within twelve months next before the 15th day of September of the year in which the statement was required to be made; the amount of surplus funds, and undivided profits, and the value of all other assets; the total amount of indebtedness as principal; the amount of gross or net earnings or income, including interest on investments, the income from all other sources for twelve months next preceding the 15th day of September of the year in which the statement is required; the amount and kind of tangible property in the State, and where situated, assessed or liable to assessment in the State, and the fair cash value thereof, estimated at a price it will bring at a fair voluntary sale; and such other facts as the auditor may require.

Upon this information, and such other information as the board can obtain, it is authorized to fix the value, for purposes of taxation, upon the franchise of such banks and trust companies. It is further provided that the auditor of the State at the expiration of thirty days after the final determination of such values shall certify to the county clerk of the counties when any portion of the corporate franchise of such banks and trust companies shall be liable to local taxation, the amount thereof liable for county, city, town or district tax, and such certificate, it is provided, should by each county clerk be filed in his office, and be by him certified to the proper collecting officer of the county, city, town or taxing district for collection.

It is further provided that as to banks and trust companies their taxes assessed by the State board of valuation and assessments, as before described, shall be due and payable on the 1st of July succeeding such report.

It is further provided that in the event the banks and trust companies failed to make such report and pay such taxes, a penalty of ten per cent. on the amount of the tax shall attach, and thereafter such tax shall bear interest at the rate of ten per cent. per
8 annum, and any bank or trust company failing to pay its taxes, penalties and interest after becoming delinquent, shall be deemed guilty of a misdemeanor, and on conviction shall be fined

$50.00 for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin circuit court shall have jurisdiction.

Your orator further respectfully submits to the court that this scheme of taxation contained in the act of November 11, 1892, above described, impairs the obligation of its contract, and is for that reason in violation of the provision of the Federal Constitution prohibiting a State from impairing the obligation of a contract. And your orator further submits that said scheme of taxation is also in violation of the 181st section of the constitution of the State of Kentucky, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town or other municipal corporation, but may, by general laws, confer on the proper authorities thereof respectively the power to assess and collect such taxes."

Your orator respectfully shows that the tax which the city of Louisville claims the right to collect and is threatening to collect from your orator has not been assessed by the city of Louisville, but the assessment has been made by the auditor, secretary of state and treasurer of the State under the pretended authority of the act of November 11, 1872, heretofore referred to.

Your orator respectfully shows to the court that the taxes which the defendant The City of Louisville is threatening to collect is upon the assessments for the years 1893 and 1894. The amount of the pretended assessment made by the said State board of valuation and assessment against your orator upon its franchise for the year 1893 is $1,495,865.56, and for the year 1894 is $1,533,094.53. Your orator further shows that for the year 1893 the tax rate of the city of Louisville was $2.17, and for the year 1894 it was $1.88, so that the total amount involved in this controversy is $61,282, which exceeds the amount of taxes which your orator would have to pay under the "Hewitt bill" in the sum of $46,000.

Your orator further shows that the auditor of the State, acting under the authority of said void law, certified the assessment against your orator's franchise for the years aforesaid to the clerk of the county court of Jefferson county; and the said clerk has certified said assessment to the tax collector of the city of Louisville, and your orator further respectfully shows that the said city of Louisville will by its officers, unless restrained by this honorable court, proceed by distraint and otherwise to collect said illegal tax upon said illegal assessment when it has no lawful right to do so, and the claim of the defendant, The City of Louisville, that it has the right to collect said taxes against your orator casts a cloud upon your orator's right to pay taxes under and in accordance with its contract, and your orator will furthermore be subjected to much harassment and litigation and unnecessary costs; and your orator and its stockholders will be greatly and irreparably injured by the false claims of the defendant, The City of Louisville, and its attempts by distraint and by a suit to collect said taxes.

To the end therefore that your orator may not be subjected to the false claims and suits which will be instituted by the city of Louisville, and that it may be spared the irreparable injury which it

will suffer by attempts to collect said taxes by distraint, and that its property and its right of contract heretofore fully stated shall not be subjected to an illegal cloud, your orator prays for a writ of subpœna against the defendant, The City of Louisville, to appear and make full and true answer to this bill (but not under oath, answer under oath being hereby waived) and that an injunction *pendente lite* be granted commanding the said city of Louisville, its officers and agents, to refrain from endeavoring by distraint or by suit or otherwise from collecting or attempting to collect any of the taxes heretofore certified to as aforesaid, or any part thereof, based upon the illegal assessment against the franchise of your orator until the final order and determination of this court, and that upon such final hearing a decree be made establishing the contract right of your orator to be taxed in the method prescribed by the act of May 17, 1886, known as the "Hewitt bill," and not otherwise, and perpetually enjoining the defendant, The City of Louisville, from collecting or attempting to collect by distraint, suit, or otherwise, the illegal taxes aforesaid improperly assessed against your orator's franchise and properties aforesaid, and from collecting any of said taxes or claimed penalties in behalf of said city, and for all general, equitable and proper relief to which your orator may be entitled.

HELM & BRUCE,
Solicitors for Complainant.

9 John D. Taggart says he is the president of complainant, and that the statements contained in the foregoing bill are true.

JOHN D. TAGGART.

Subscribed and sworn to before me by John D. Taggart this 17th day of April, 1897.

ARTHUR PETER,
Notary Public for Jefferson County, Kentucky.

My commission expires January 15, 1898.

10 Exhibit "A" with the bill of complaint is as follows:

SINKING FUND OFFICE, *Feb.* 13, 1894.

A committee, consisting of Messrs. Thomas L. Barrett, John H. Leather, and George W. Swearingen, appeared before the board on behalf of the banks, who are members of the Louisville clearing-house, and stated that it was the purpose of said banks to resist the payment of the license fee demanded of them under the license ordinance approved January 29, 1894, on the ground that said banks were not legally liable to pay the same *same*, but in order to save the sinking fund from any embarrassment occasioned by their refusal to pay said license fee, the banks, with two or three exceptions, were willing to enter into an arrangement whereby they would pay a part of the amount demanded of them and lend the sinking fund the balance thereof, to be repaid, with interest at four per centum per annum, if it was finally decided and adjudged that the banks were not liable to pay said license fees.

After discussion the president was, on motion of Mr. Tyler, seconded by Mr. Summers, authorized to enter into the following arrangement with the different banks, *true* and title companies, who will be subject to the payment of the license fees if the license ordinance is finally adjudged to be valid and enforceable:

First. To accept from each of said banks and companies a payment equal to the difference between the amount they now pay to the State for State taxes and the amount they would be required to pay for State taxes under the provisions of what is known as the "Hewitt bill." This sum shall be an actual payment, not to be repaid under any circumstances, but its payment shall not in any manner or to any extent prejudice the banks or companies paying it or be taken as a waiver of any legal right which they have in the premises.

Second. In addition to making the above payments, the said banks and companies, save those selected to test the question involved, shall each lend the sinking fund a sum which, added to said payment, will equal four per centum of its gross earnings during the year 1893, and the sinking fund will execute for said loans its obligations agreeing to repay the same, with interest at four per centum per annum, when, and if, it shall be finally adjudged by the
11 court of last resort that said banks or companies are not liable to pay the license fee required by the ordinance aforesaid, but if it is finally adjudged that they are liable to pay said license fee, then the said loan shall be taken and deemed as a payment of said license fee and the obligation to repay the same shall be void.

Third. The banks or companies selected to test the questions involved will each lend the sinking fund a sum equal to four per centum of their gross earnings for the year 1893, and will receive therefor the obligations of the sinking fund as above described.

Fourth. This arrangement is to be entered into with the understanding that the said banks and companies will institute without delay and diligently prosecute such actions as may be necessary to settle and adjudge the right and liabilities of the parties in the premises, and pending such proceedings the sinking fund will not prosecute them or any of them for doing business without license.

A true copy.
Attest:

J. M. TERRY,
Secretary & Treasurer.

Stipulation between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, and the banks, trust, and title companies of the city of Louisville.

It is agreed between the city of Louisville, the commissioners of the sinking fund of the city of Louisville, represented by H. S. Barker, city attorney, acting under the advice and by the authority of the board of sinking fund commissioners, given at a regular meeting of said board, and the mayor of the city of Louisville, on the one part, and the various banks, trust and title companies of the city of

Louisville, acting by Humphrey & Davie and Helm & Bruce, their attorneys, of the other part:

First. That in February, 1894, it was agreed between the city of Louisville and the board of sinking fund commissioners, acting together in the interest of the said city, and the various banks, trust and title companies, acting through their committee, to wit, Messrs. Thomas L. Barrett, John H. Leathers, and George W. Swearingen, and their counsel, to wit, Mess. Humphrey & Davie and Helm & Bruce, that the question of the liability of said banks and
12 trust and title companies to pay municipal taxes, either license or ad valorem, otherwise than as provided by the revenue laws, commonly known as the Hewitt bill, should be tested by appropriate litigation looking to that end.

Second. In order to effectually test the question as to all of said companies they were divided into three classes, it being understood that all who had accepted the provisions of the said Hewitt bill would fall in one or the other of the classes named, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

It being understood that the trust and title companies which had accepted the provisions of the Hewitt bill would fall in class B, above named.

Third. In pursuance of that agreement the sinking fund commissioners caused to be issued warrants against the Bank of Kentucky, representing class A; the Louisville Banking Company, representing class B, and the Third national bank, representing class C, and these banks respectively applied for writ of prohibition against the city court of Louisville proceeding with the hearing, that being the manner pointed out by the city charter for testing the validity of city ordinances.

It was distinctly understood and agreed at that time, and this agreement was made for the best interest of all parties to it, that if any bank in any class should eventually fail to establish the existence and validity of the contract, which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes, and it was also agreed that if any bank of any class should succeed in establishing a contract and the validity thereof under the Hewitt bill that that should exempt all banks and companies falling within that class from the payment of taxes, except as provided in the Hewitt bill.

Fourth. On the faith of this agreement all of the banks and companies aforesaid paid into the sinking fund the amounts of taxes claimed against them under the terms and conditions named
13 in the minutes of the sinking fund commissioners of February 13th, 1894, an attested copy of which is hereto attached as part hereof, but at a later date and in further reliance upon said agreement all said banks and companies, except those actually involved in the test cases, paid the whole of the amount of taxes

claimed as against them by the city of Louisville without reservation until the question thus raised should be finally disposed of.

HUMPHREY & DAVIE,
HELM & BRUCE,
For the Banks, Trust, & Title Companies of the City of Louisville.
H. S. BARKER, *City Att'y.*

Approved:
C. H. GIBSON,
Pres't Com'rs Sinking Fund, City of Lou.

A true copy.
Attest: HUSTON QUIN.
ARTHUR PETER.
M. McLOUGHLIN.

14 Upon which bill of complaint there issued the following subpœna in chancery:

The President of the United States of America to the City of Louisville, Greeting:

You are hereby commanded to appear before our circuit court of the United States of America for the district of Kentucky, at the Federal court hall, in the city of Louisville, on the first Monday in June next, to answer a bill in equity exhibited against you in our said court by the Fidelity Trust & Safety Vault Company, which you shall in nowise omit under the penalty of the law.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, and the seal of our said circuit court, hereto affixed, at the clerk's office of said court, in Louisville, this 17th day of April, A. D. 1897, and in the 121st year of our Independence.

Attest: THOS. SPEED,
C. C. C., K. D.,
[SEAL.] By HENRY F. CASSIN,
His Deputy.

MEMORANDUM.—The defendant- is to enter its appearance in the suit in the clerk's office on or before the 7th day of June next, the day at which the writ is returnable; otherwise the bill may be taken *pro confesso.*

THOS. SPEED, *Clerk,*
By HENRY F. CASSIN,
His Deputy.

And the marshal returned said spa. in chancery with the following endorsement thereon:

Executed April 24th, 1897, on the City of Louisville by delivering a copy of the within spa. in chancery to Geo. D. Todd, mayor of said city.

JAMES BLACKBURN,
U. S. Marshal,
By R. E. HAWES, *D. M.*

15 And on the 27th day of May, 1897, came parties, by counsel, and filed stipulation herein.

Said stipulation above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIDELITY TRUST AND SAFETY VAULT COMPANY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.
} No. 6582. Stipulation.

It is stipulated and agreed that the defendant, City of Louisville, may file a demurrer to the complainant's bill and an answer at the same time without waiving the demurrer.

HELM & BRUCE,
Counsel for Complainant.
H. L. STONE,
Counsel for Defendant, City of Louisville.

Demurrer above referred to is as follows:

In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIDELITY TRUST & SAFETY VAULT COMPANY, Complainant,
versus
CITY OF LOUISVILLE, Defendant.
} No. 6582. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Bill of Complaint of The Fidelity Trust and Safety Vault Company, Complainant.

16 This defendant, by protestation, not confessing any or all of the matters and things in the complainant's bill of complaint contained to be true in such manner and form as the same is therein set forth — alleged, demurs to said bill, and for cause of demurrer states:

1. That the said bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said bill does not contain any matter of equity whereon this court can ground any decree or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant does demur thereto, and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

I hereby certify, as counsel for the defendant, City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, }
Jefferson County, } *sct:*

17 Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, George D. Todd, who states that he is mayor and chief officer of the defendant, City of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27 day of May, 1897.
My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

Answer above referred to is as follows:

18 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky. In Equity.

FIDELITY TRUST & SAFETY VAULT CO., Complainant, }
versus } No. 6582.
CITY OF LOUISVILLE, Defendant. }

The Answer of The City of Louisville, Defendant, to the Bill of Complaint of Fidelity Trust & Safety Vault Company, Complainant.

This defendant, now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had, or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, denies that the complainant by its charter and the amendments thereto has power to do such banking business as is usually granted to such corporations, or to do a regular or general banking business at all, or that it has since its organization or at any time been engaged in the banking business in the city of Louisville. On the contrary, the complainant's charter expressly provides (section eight), "That nothing herein shall be construed to permit said company to discount paper or to engage in the business of banking."

This defendant denies that prior to the passage of the revenue law by the General Assembly of the Commonwealth of Kentucky, approved May 17, 1886, known as the "Hewitt bill," the law of said Commonwealth governing the taxation of banks, was unsatisfactory, or that there were then four banks, or any bank, chartered by said

State prior to the year 1856, whose original charter life had not expired, or which held any charter or other contract or contracts beyond the power of the State to repeal, or that the Commonwealth was by any alleged contract or contracts bound, beyond its legislative control or power to alter, amend, and repeal, to receive fifty cents on each share of one hundred dollars of stock in said banks, or either of them, referred to as the "old banks," in full of its claim for taxation upon all the different kinds of property of said banks.

This defendant denies that there was any complication with the said old banks, or that in addition to such alleged complication with said old banks, the national banks in the State were claiming the right, or that they had the legal right, to be put upon a footing of equality as to taxation with said four old banks, or either of them, or that the courts of Kentucky had held that the national banks in said State could not be subjected to a heavier burden of taxation than said four old banks.

This defendant denies that no other bank in the State could be taxed at a materially higher rate than fifty cents on each share of one hundred dollars of its stock, without practically driving it out of business, or that it would thereby be unable to compete with said four old banks and the national banks, or that for this reason by the express provisions of the respective charters granted by the State, or by the general law, all banks and other institutions of loan or discount were taxed at the same rate as the old banks and national banks.

19 This defendant denies that the State was dissatisfied with the existing tax rate against banks and similar corporations, or desired to increase the rate, or desired, for the reason alleged, to have the tax rate on all the banks in the State uniform, or that this could only be done by exempting them from local taxation and increasing their tax to the State, or that it was not within the power of the State to increase the tax rate against the old banks except with their consent, or that they were asked, in the interest of uniformity, to consent, or that, in the interest of uniformity, or to secure to the banking interests in the State, repose on the tax question for the remainder of their respective charter lives, the old banks did consent in the manner stated in the bill to the scheme of taxation therein described, or, as stated in the provisions of the act of May 17, 1886, referred to and quoted in the bill.

The defendant states, section six (6), article two (2), of said act of May 17, 1886, pertaining to the taxation of banks, expressly provided that said act (meaning article 2 therein, with respect to the taxation of banks), should be subject to the provisions of section eight (8), chapter sixty-eight (68) of the General Statutes, which was as follows:

"All charters and grants of or to corporations, or amendments thereof, enacted or granted since the 14th of February, 1856, and all other statutes, shall be subject to amendment or repeal at the will of the legislature, unless a contrary intent be therein plainly expressed: *Provided*, that whilst privileges and franchises so granted

may be changed or repealed, no amendment or repeal shall impair other rights previously vested."

This defendant states that by said section six (6), article two (2) of the said act of May 17, 1886, the legislature of the State expressed its intention to reserve, and it did in fact reserve, its power to amend or repeal at the will of the legislature of the State, said act of May 17, 1886, or any part thereof, including the scheme for taxation of banks and the exemption of banks, from county and municipal taxes therein provided for, and a contrary intent was not therein plainly expressed.

This defendant further states that by section five (5) of article twelve (12) of said act of May 17, 1886, all other acts, general and special, and parts of acts inconsistent therewith, or not in conformity therewith, were repealed.

This defendant further states that the charter or grant of or to the complainant, or the amendment or amendments to its charter by the legislature of the State of Kentucky, and under which the complainant was organized or is engaged in carrying on its business, were enacted or granted since February 14, 1856, and all provisions therein with respect to the rate of taxation to be paid by complainant to the State, or exempting complainant from county and municipal taxation, were repealed by said section five (5), article twelve (12) of said act of May 17, 1886.

This defendant denies that said act of May 17, 1886, and complainant's alleged acceptance thereunder, as provided by said statute, and complainant's payments thereunder and in accordance therewith, to the State of a sum in excess of that paid by individuals to the State on the same kind of property, and the acceptance thereof by the State, constituted a contract between the State on the one part and complainant and its stockholders on the other part, continuing during the legal existence of complainant's corporate life, or that the State was equally bound thereby, or had no right to retire therefrom or amend or repeal the same, as provided for in section six (6), article two (2) of said act of May 17, 1886.

This defendant denies it was agreed between the State and the complainant that said alleged contract should subsist during the charter life of complainant, without the condition or qualification embodied in said section six (6), or that the State of Kentucky was unmindful of its alleged contract obligations with complainant, or others, when through its General Assembly it undertook, on November 11, 1892, to tax all the banks in the State in a manner different from that provided for in said alleged contract, and to subject them to all manner of local taxation, or that as applied to complainant the tax under the act of November 11, 1892, will exceed the tax which it would have to pay under the Hewitt bill by $20,000.

This defendant denies that the ordinance of 1894, providing for a license tax of four per cent. of the gross receipts or earnings of the banks and trust companies in the city of Louisville, in lieu of an *ad valorem* tax, was adopted under the authority of the statute entitled "An act for the government of cities of the first class," ap-

proved July 1, 1893, or in pursuance thereof, although it was
20 claimed that such authority existed when said ordinance was adopted; or that the defendant, on the demand of said license tax being refused, commenced legal proceedings in the city court of Louisville in behalf of the city against all of said banks and trust companies, including the complainant.

This defendant denies that it was agreed between the city of Louisville and the commissioners of the sinking fund of the city of Louisville upon the one part, and the said banks and trust companies, including the complainant, upon the other, that, pending the litigation concerning the validity of said ordinance providing for a license tax upon said banks and trust companies, payments and loans to said commissioners of the sinking fund should be made, in the manner or upon the terms and conditions, as stated in complainant's bill, or that this defendant agreed that said litigation should be inaugurated, or that such alleged payments or loans to said commissioners of the sinking fund should be without prejudice to the alleged rights of said banks and trust companies, or either of them.

This defendant denies that it agreed, as alleged in complainant's bill, to the selection of any bank or company to test the questions involved in said litigation, or that this defendant made, entered into, or was a party to said alleged contract or agreement, written or verbal, with respect to said litigation over the validity of said license tax, or the ordinance providing for the collection thereof from the banks and trust companies in the city of Louisville, or that said banks and trust companies should be divided into three classes, to wit:

A. Banks whose charters had been granted prior to 1856.

B. Banks whose charters had been granted subsequent to 1856.

C. National banks.

This defendant denies that it was understood that the trust or title companies, which are alleged to have accepted the provisions of the Hewitt bill would fall in said class "B," or that this defendant agreed that if any bank in any class should eventually fail to establish the existence or validity of the contract which it was claimed was made under the Hewitt bill, that all of that class should thereafter regularly and promptly submit to the existing laws and pay their taxes, or that this defendant agreed that if any bank of any class should succeed in establishing the alleged contract, or the validity thereof under the Hewitt bill, that that should exempt all banks and trust companies, or any bank or trust company falling within that or any of said alleged classes from the payment of taxes, except as provided in the Hewitt bill.

This defendant denies that said alleged agreement, an alleged copy of which, or the substance of which is filed with complainant's bill, marked "A," was signed by the attorney for the city of Louisville under the authority or direction of the mayor, or that this defendant executed or delivered said alleged contract or agreement, or that the same was ever authorized, ratified, or approved by the general council and mayor of the city of Louisville, and said alleged

agreement or contract set forth in said copy marked "A" is not the act and deed of this defendant, and in so far as the same purports to be an agreement or contract by or with this defendant it was beyond the lawful power or authority of the city attorney, mayor, or any other officer of this defendant to execute or deliver for or on behalf of this defendant, and the same was made without express authority of law, and was and is null and void, and of no binding force or effect upon this defendant, nor does the same operate to prevent or defeat the power and authority vested in this defendant by said act entitled "An act for the government of cities of the first class," approved July 1, 1893, to levy and collect its municipal taxes from the complainant and other banks and trust companies.

This defendant states that said commissioners of the sinking fund of the city of Louisville was, in 1894, and long prior thereto, and ever since has been, a separate and distinct corporation from this defendant, organized and existing under the laws of the State of Kentucky, with power to sue and be sued, contract and be contracted with, and to do and perform all things necessary to execute the duties required and powers given by the act incorporating the same and the amendments thereto; but, neither said commissioners of the sinking fund of the city of Louisville, nor the president nor the attorney thereof, nor all of them together, had any lawful power or authority thus to bind or obligate defendant by the terms, conditions, stipulations, or covenants, or either of them, contained in said alleged agreement or contract, at the time, in the manner, or under the circumstances alleged in complainant's bill, or otherwise.

21 This defendant denies that said alleged agreement or contract was duly executed, or on the faith, or in reliance thereon, the various banks and trust companies of the city of Louisville, including the complainant, or either of them, paid into the said sinking fund the amounts of taxes claimed against them, under the terms and conditions named in the alleged minutes of said commissioners of the sinking fund; or that, at a still later date, the said banks and trust companies, except those already involved in the alleged test cases, paid the whole amount of the taxes claimed against them by this defendant, without reservation, until the question should be finally disposed of, or that this was done without prejudice to the alleged rights of said banks and trust companies, or was not to be deemed a waiver by them of any of their claimed rights, or that the same was done to prevent confusion from coming into the management of said sinking fund, or that the taxes against banks claimed by the city had been transferred to the sinking fund of said city, except as provided for in said license-tax ordinance, which was invalid and unconstitutional, because the license tax aforesaid was, and was intended to be, by said ordinance in lieu of the *ad valorem* tax levied upon all other assessed, individual and corporate, tangible and intangible, property in the city of Louisville, and thus violated the constitution of the State of Kentucky.

This defendant denies that it made any agreement that the said alleged payments to said sinking fund should not last longer than the alleged final decision in favor of the banks, if such decision

should be rendered, or that the amount paid by the banks and trust companies to this defendant, or said commissioners of the sinking fund, under said alleged agreement, was or is over $150,000.

This defendant denies that with a view of testing every phase of the question, or so that a decision when rendered would determine the liability of every bank and trust company in the city of Louisville, three suits were brought pursuant to said alleged contract, or that there was any contract with this defendant to do so, or that the Bank of Kentucky in the suit it brought represented the Bank of Louisville, or that the Louisville Banking Company in the suit it brought represented all or either of the other banks and trust companies in the city whose charters were granted by the State since 1856, or that the Third national bank, in the suit brought by it, represented all or either of the other national banks of the city.

This defendant denies that it was a party to the said suits brought by the Bank of Kentucky, Louisville Banking Company, and the Third national bank, or either of them, or that this defendant prosecuted an appeal from the judgment of the Jefferson circuit court against the Bank of Kentucky, or that either the Louisville Banking Company or the Third national bank prosecuted an appeal from the judgment of said court against this defendant, or that either of said three suits was really against the city of Louisville; or that in the court of appeals this defendant was represented by its corporation counsel, or that said counsel represented any party in either of said cases in said court or the Jefferson circuit court, except R. H. Thompson, judge of the police court of the city of Louisville, and, indirectly, said commissioners of the sinking fund, for whom he was then the regularly employed attorney, and to whom the license tax against said banks and trust companies, under the ordinance aforesaid, was made payable.

This defendant denies that it was a party to the record in the court of appeals on either of said three appeals, or as such was represented in that court by its official attorney.

This defendant states that the records in said three cases will show what questions were submitted to the circuit court and court of appeals, and what were the issues made by the pleadings and decided by each of said courts, as well as what the contentions of each party were before said courts, and this defendant denies all statements in complainant's bill inconsistent with the records aforesaid. It is true, however, that the court of appeals, on June 1, 1895, decided on said three appeals that the license tax for the fiscal year ending August 31, 1894, fixed by the ordinance aforesaid, was invalid and not enforceable against the Bank of Kentucky, Louisville Banking Company, and the Third national bank, which had complied with the provisions of the act of March 17, 1886, and that the provisions of the constitution of the State of Kentucky, adopted September 28, 1891, and of the general revenue law, approved November 11, 1892, did not repeal the provisions of article two (2) of the Hewitt bill, with respect to said three banks, and that said three banks had an irrepealable contract with the State to pay their taxes, as provided in the Hewitt bill; and in pursuance of said decision the said

judge of the police court of the city of Louisville was prohibited from taking any further steps or proceedings upon the warrants issued against said three banks and pending in said police court for carrying on a banking business during the fiscal year ending August 31, 1894, without paying the license tax, as provided in the ordinance aforesaid.

22 This defendant denies that said former adjudication constitutes a bar to any further claim by or on behalf of the city of Louisville for *ad valorem* taxes, or other taxes not involved in said actions against said three banks which instituted said actions, or a bar to any claim for *ad valorem* taxes by or on behalf of this defendant against complainant, or either of the other banks and trust companies in the city of Louisville, provided, or in the event, the court of appeals of the State of Kentucky at any time should overrule its said decision rendered on June 1, 1895, in the actions aforesaid, and decide that the banks and trust companies in said State have no such irrepealable contract, and are bound to pay taxes on their property, tangible and intangible, to the State and to the counties and municipalities in which their places of business are located, at the same rate fixed therein as against individuals and all other corporations, in accordance with the provisions of the State constitution of September 28, 1891, and said general revenue law of November 11, 1892, set forth in complainant's bill.

This defendant denies that the scheme of taxation contained in said act of November 11, 1892, impairs the obligation of complainant's alleged contract, or is, for that reason, in violation of the provision of the Federal Constitution, prohibiting a State from impairing the obligation of a contract, or that said scheme of taxation is in violation of section 181 of the State constitution, which declares that the "General Assembly shall not impose taxes for the purposes of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes," and this defendant denies that the General Assembly, by the provisions of the revenue law of November 11, 1892, has imposed taxes for the purposes of any county, city, town, or other municipal corporation, and the court of appeals of the State of Kentucky has construed said section of the State constitution as meaning that the General Assembly shall not impose or fix the *amount* or *rate* of taxes for the purposes of any county, city, town, or other municipal corporation; and has further decided, as has the Supreme Court of the United States, that the provisions of said revenue law of November 11, 1892, with respect to the assessment of the franchises or intangible property, of corporations, companies, and associations by the State board of valuation and assessment, in the method set forth in the complainant's bill, are not violative of, but in harmony with, the constitution of the State of Kentucky.

This defendant denies that the city of Louisville claimed, or threatened at or before the institution of this action, or does now claim or threaten, or so long as said decision of the court of appeals of Kentucky, rendered June 1, 1895, referred to in the complainant's

bill, remains in full force and effect, will claim the right to collect, or threaten to collect, from the complainant any tax held to be unlawful by said decision, or under the revenue law of November 11, 1892, on either an assessment by the city assessor of this defendant, or by the State board of valuation and assessment.

This defendant denies that it is now, or was at the institution of this action, threatening to collect any taxes from the complainant upon the assessment for the years 1893 and 1894, or either of them.

This defendant denies that it will by its officers, or either of them, unless restrained by this honorable court, proceed by distraint, or otherwise, to collect said alleged illegal tax upon said alleged illegal assessments, or when it has no lawful right to do so, or that the alleged claim of this defendant, that it has the right to collect said taxes against the complainant, casts a cloud upon the complainant's alleged right to pay taxes under and in accordance with its alleged contract, or that the complainant will be subjected to much or any harassment or litigation, or unnecessary or any costs, or that complainant, or its stockholders, will be greatly or irreparably or at all injured by the alleged false claims of this defendant, or its alleged attempts by distraint or suit to collect said taxes, or that it has made or is making any false claim for taxes against the complainant, or that it has made, or is now making, any attempt by distraint, suit, or otherwise, to collect any taxes from the complainant, held to be unlawful under said decision of June 1, 1895.

This defendant, for further answer and defense to complainant's bill, states that the court of appeals of Kentucky, on March 24, 1897, in the case of Deposit Bank of Owensboro *v.* Daviess County, and other bank tax cases, wherein the same legal questions were involved and issues were made, as in the three cases referred to in the complainant's bill, rendered a decision in which the former decisions of said court, in said three cases delivered June 1, 1895; and in the cases of Franklin County Court *v.* Deposit Bank of Frankfort, Same *v.* Bank of Kentucky, and other bank tax cases, decided June 5, 1888, reported in 87 Ky. Rep., 370, were expressly overruled; and
23 said court furthermore decided that no bank, State or national, trust company, or other similar institution in the State of Kentucky, had or was entitled to an irrepealable contract with the State under the provisions of the Hewitt bill, or by reason of its acceptance of, or compliance with, those provisions, and that the same, with respect to all said banks and similar institutions in the State, were repealed by the State constitution of September 28, 1891, and the general revenue law of November 11, 1892, and were bound and liable to pay State, county, and municipal taxes, and at the same rate as individuals and other corporations; that the legislature of Kentucky reserved in section six (6), article two (2) of said act of May 17, 1886, the power at will to amend or repeal the scheme of bank taxation provided for in said article of said act, which express reservation of power to amend or repeal formed a part of the contract, if any, between the State and the banks, and other similar institutions, which had accepted the provisions of said act and complied therewith; that the repeal of the Hewitt bill, with respect to

the method and rate of bank taxation by the State constitution and general revenue law of November 11, 1892, did not impair the obligation of any contract with such banks, but that said repeal was only a legitimate exercise of the said reserved power in the legislature to amend or repeal; and that the acts of the legislature, adopted subsequent to February 14, 1856, amending the original charters of said four old banks, were grants to said corporations and extensions of the period of their charter existence, within the purview of the statute of February 14, 1856, referred to in the complainant's bill, and were all subject to amendment or repeal by the legislature.

This defendant states that by the concluding section of said revenue law of November 11, 1892, all acts or parts of acts in conflict therewith, including the Hewitt bill, with respect to taxation, were repealed.

This defendant states that said decision of March 24, 1897, by the rules of said court of appeals, does not become final until the expiration of thirty days, excluding Sundays, after the date of its rendition, nor until the expiration of such further time as may be given within said period by said court in which to file a petition for a rehearing, nor until such petition for a rehearing is overruled; and this defendant states that, within said period of thirty days, said court gave further time to counsel representing the banks, which were parties in said cases so decided, to wit: sixty days, excluding Sundays, from March 24, 1897, in which to file petitions for a rehearing, some of which have been filed, and said period of extension has not yet expired, nor has said decision become final.

This defendant, while disavowing any intention or purpose, on its part, to collect or attempt to collect municipal taxes from the complainant, or any other bank or trust company in the city of Louisville, held to be unlawful by said decision of the court of appeals of Kentucky, of June 1, 1895, so long as said decision is not overruled and remains in full force and effect, it avers that should said decision of said court of March 24, 1897, become final and in full force and effect, it will, in that event, as in duty bound, proceed to collect from the complainant and all other banks and trust companies, municipal taxes in accordance therewith, and as authorized by the laws of the State of Kentucky, but not otherwise.

This defendant states that the complainant has not filed its annual report for the years 1895, 1896, and 1897 with the auditor or the State board of valuation and assessment, as required by the revenue law of November 11, 1892.

This defendant, therefore submits that the complainant was not, at the institution of this action, and is not now, being subjected to any false claim or claims, nor to any suit or suits, nor will it suffer irreparable or any injury, unless an injunction, *pendente lite* be granted herein commanding this defendant, its officers and agents, to refrain from endeavoring by distraint, suit, or otherwise, from collecting or attempting to collect any of the taxes on assessments heretofore certified to it, based on the alleged illegal assessment of

the franchise of the complainant until the further order and determination of this court.

This defendant denies that the complainant is entitled to any injunction whatever, or to any other equitable relief in this court.

Wherefore, having answered, this defendant prays that the complainant's bill be dismissed, with judgment for its costs, and for all other relief to which it in equity may appear to be entitled.

H. L. STONE,
City Attorney, Solicitor for the Defendant, City of Louisville.

24 STATE OF KENTUCKY, }
Jefferson County, } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, the affiant, George D. Todd, who states he is the mayor and chief officer of the defendant, City of Louisville, and the facts stated in the foregoing answer so far as stated from his personal knowledge are true, and so far as stated from information he believes the same to be true.

GEO. D. TODD.

Subscribed and sworn to before me by said George D. Todd, mayor, this 27th day of May, 1897.

My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public of Jefferson County, Kentucky.

25 And on the 28th day of May, 1897, the following order was entered:

This day came the complainant in the above-entitled cause and filed herein notice — duly served on the defendant, and moved the court to grant it an injunction until the further order of the court, enjoining and restraining the defendant, The City of Louisville, from taking any steps for the enforcement of the taxes set forth in said bill of complaint.

And came the said City of Louisville, by H. L. Stone, its city attorney, and objected to the said motion, and the same coming on to be heard was submitted, and the court, not being advised, takes time.

And at the same time this cause came on to be heard upon the demurrers, general and special, heretofore filed herein by the said City of Louisville, and the same were argued by counsel and submitted to the court, and the court, not being advised, takes time.

And on the 4th day of June, 1898, the following order was entered:

It is ordered by the court that the preliminary injunction heretofore granted in this case be, and the same is hereby, continued until 25th day of June, 1898.

And on the 25th day of June the following order was entered:

This day came the complainant and offered an amended bill herein, to which the defendant objected, and the court, being advised, allowed said amendment to be filed, except the 3d paragraph thereof,

which the court disallowed without prejudice to the right of the complainant to raise that question in another proceeding so far as it affected State taxes.

26 Then came the defendant The City of Louisville and filed a demurrer to the amended bill, which is sustained; to which the complainant excepts.

Said amended bill above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIDELITY TRUST AND SAFETY VAULT COMPANY, Complainant, *versus* CITY OF LOUISVILLE ET AL., Defendants. } Amended Bill.

The complainant, Fidelity Trust and Safety Vault Company, amends its bill herein and says that the Hewitt law, the effect of which is set out in the original bill, did not apply to banks merely, but to banks and other institutions of loans or discount and to all corporations required by law to be taxed on their capital stock. And your orator respectfully shows that it is and always has been an institution of loan, and always since its organization has been required by law to be taxed and has always been taxed on its capital stock.

Your orator further shows that the proposition of the Commonwealth of Kentucky conveyed in the fourth section of the Hewitt law was not to banks alone, but to banks and other institutions before mentioned. And your orator, in the regular and formal manner provided in said fourth section of the Hewitt law and as fully set out in the original bill, entered into the contract with the Commonwealth of Kentucky, and your orator submits that the

27 Commonwealth did not as a mere matter of grace extend an immunity or exemption from taxation to your orator, but entered into a contract based upon a valuable consideration; and your orator further respectfully shows to the court that it is not necessary to support such a contract that your orator should be engaged in the performance of a public service, but your orator further submits to the court that it is engaged in the performance of a public service as much so as banks and sufficient to support an exemption from taxation.

Your orator says that at the time it entered into the contract with the city of Louisville to abide the result of the decision in the case of The Louisville Banking Company *vs.* R. H. Thompson and The City of Louisville, it and the city and the counsel for said city, all in good faith, believed that the decision of that case would settle every question which could be raised either by it or the city of Louisville, and your orator shows that at that time the case of the Louisville Trust Company *vs.* City of Louisville had not been decided.

Your orator further shows that the question of whether it was entitled to the rights accorded under the Hewitt law was not involved or discussed by counsel for either side, but was conceded by the

city of Louisville in the aforesaid case of Louisville Trust Company *vs.* City of Louisville.

2. Your orator further shows that by an amendment to its charter adopted by the General Assembly of the Commonwealth of Kentucky and approved April 12, 1888, it was provided as follows:

"SECTION 1. That the charter of the Fidelity Trust and Safety Vault Company, of Louisville, Kentucky, be and the same is
28 so amended that promissory notes payable to any person or persons, or to a corporation, and payable and negotiable at the office of said company, in Louisville, Kentucky, which shall be endorsed to and discounted by any bank incorporated under any law of this Commonwealth, or organized in this Commonwealth under any law of the United States, shall be and they are hereby placed on the same footing as foreign bills of exchange."

And by an amendment adopted the 15th day of May, 1890, it was provided as follows:

"SECTION 2. That said company may receive money on deposit subject to check or payable at an agreed time.

"SECTION 3. That all promissory notes, secured by lien on real estate or collateral, made negotiable and payable at a chartered bank or at the office of said company, shall, when endorsed to, and purchased by said company, be placed on the footing of foreign bills of exchange."

Your orator further shows that since the adoption of said amendment it has regularly done a savings-bank business, and has received deposits and paid interest on the same, in every respect doing the same character of business as done by the Louisville Trust Company under its power to do a savings-bank business; and your orator submits that for the purposes of taxation, and so far as the performance of a public service is concerned, it should be deemed and treated as a bank.

3. Your orator further shows that under the laws of Kentucky provision is made for a State board of equalization, which annually meets at the capital of the State, at Frankfort, and there
29 equalizes the assessments of all the real and personal property of the individual citizens of the State in the manner and on the basis hereinafter stated. Said board regularly meets each year and undertakes to carry out the provisions of said act, and especially the sections hereinafter quoted governing the State board of equalization, and the said board has been in the habit of meeting each year for a great many years in the past. By said act it is provided as follows:

"SECTION 4274. Percentage of value to be fixed on real property—Report to county judges—Witnesses.—The said board of equalization shall fix the percentage of assessed value of real property at seventy per centum of cash value, and all counties whose average lists of real property are below such per centum shall be raised to the same, and all those counties whose average lists are above the same, shall be lowered to said standard. The secretary of the State board of equalization shall report to the various judges of this Commonwealth, as soon as possible, the action of the

board in regard to their respective counties, whereupon said judges may, in their discretion, each appoint not exceeding five witnesses to appear under oath before said board in reference to the action of the board. The board shall then revise their action, or not, as they may think just and proper. Said witnesses must appear in a reasonable time, or they shall lose their right to be heard. The compensation and expenses of said witnesses, if any, shall be paid by their respective county courts."

And by said act it is further provided, as to the equalization of personal property, as follows:

"SECTION 4275. Percentage of value to be fixed on personal property.—The said board of equalization shall also equalize the
30 personal property of every county in this Commonwealth, by adding to or subtracting from the list of personal property, as the case may be, the same per centum as was added to or subtracted from the list of farm lands for the same county, and for this purpose the average per centum of assessed value to cash value of farm lands shall be used, and in determining such per centum, fractions less than one-half shall be rejected and fractions of one-half and over shall be counted as one."

Said act provides the method of ascertaining the cash value of said real and personal property, and after thus ascertaining said cash value all assessments are equalized on a basis of seventy per cent. of that cash value.

Said act was first adopted May 10, 1884, and has never been repealed, but has been amended from time to time, and has been each year from that time to the present enforced and carried out, especially the sections above quoted, by the said State board of equalization. Said act is entitled "An act to equalize assessments for revenue purposes, and to provide for a State board of equalization."

The result of enforcing this statute is that the individual citizens of the State are taxed on a basis not exceeding seventy per cent. of the cash value of their property, while your orator under the terms of the act of November 11, 1892, fully set out in the original bill, is taxed on the full book or apparent value of all its assets, which is much in excess of its real value, and is denied the privilege accorded to the individual citizens of the State, of having the assess-
31 ment of its property equalized on the basis of seventy per cent. of its cash value.

Your orator shows that it is thus denied the equal protection of the laws guaranteed by the fourteenth amendment of the Federal Constitution.

Wherefore your orator prays as in the original bill, and for all such general and equitable relief as to the court may seem proper and just under the circumstances; and your orator will ever pray.

HELM & BRUCE,
Solicitors for Complainant.

John Stites says he is the president of the complainant, and that the statements contained in the foregoing amended bill are true.

JOHN STITES.

Subscribed and sworn to before me by John Stites this 20th day of June, 1898.

HUSTON QUIN,
Notary Public for Jefferson County, Kentucky.

My commission expires with the next session of the Kentucky legislature.

Demurrer filed June 25th, 1898, is as follows:

32 In the Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

FIDELITY TRUST & SAFETY VAULT COMPANY, Complainant, *versus* CITY OF LOUISVILLE, Defendants. } #6582. In Equity.

The Demurrer of The City of Louisville, Defendant, to the Amended Bill of Complaint of Fidelity Trust & Safety Vault Company, Complainant.

This defendant, by protestation, not confessing any or all of the matters and things in the complainant's amended bill of complaint contained to be true, in such manner and form as the same is therein set forth and alleged, demurs to the said amended bill, and for cause of demurrer states:

1. That the said amended bill fails to state facts sufficient to show jurisdiction in this court.

2. That the said amended bill does not contain any matter of equity whereon this court can ground any decree, or give to the complainant any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said amended bill, this defendant does demur thereto, and humbly demands the judgment of this court whether it shall be compelled to make any further or other answer to the said amended bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

I hereby certify, as counsel for the defendant, City of Louisville, in the foregoing demurrer, that in my opinion the same is well founded in point of law, and proper to be filed.

H. L. STONE,
City Attorney, Solicitor for Defendant, City of Louisville.

STATE OF KENTUCKY, *Jefferson County,* } *sct:*

Personally appeared before me, John F. Groene, a notary public in and for the county and State aforesaid, Charles P. Weaver, who states that he is the mayor and chief officer of the defendant, City

of Louisville, and the foregoing demurrer is not interposed for delay of the cause in which it is filed.

CHAS. P. WEAVER.

Subscribed and sworn to before me by said Charles P. Weaver, mayor, this 23d day of June, 1898.

My commission expires January 23, 1900.

JNO. F. GROENE,
Notary Public, Jefferson County, Kentucky.

33 And on the 25th day of June, 1898, the following decree was entered:

This cause having been submitted and brought on to be heard on the complainant's motion for a temporary injunction, and on the defendant's demur-er to the bill of complaint and the amended bill of complaint, and due deliberation having been had, it is ordered, adjudged, and decreed that the complainant's said motion be and the same is overruled, and that the said demurrer of the defendants be and the same is sustained, and that the complainant's bill of complaint as amended be, and the same is hereby, dismissed with costs to the defendant, to be taxed.

And now came the complainant and prayed an appeal in open court and tendered its assignment of errors. Whereupon the court allows the appeal and orders the assignments of errors to be filed and fixes the appeal bond herein at $1,000.

Assignment of errors above referred to is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FIDELITY TRUST & SAFETY VAULT COMPANY, Complainant,
vs.
CITY OF LOUISVILLE. } 6582.

Comes the complainant and assigns the following as the errors of the court committed of which complaint is made:

1. The court erred in sustaining the demurrer to the bill of complaint.

2nd. The court erred in sustaining the demurrer to the bill of complaint as amended.

34 3rd. The court erred in refusing to allow the 3rd paragraph of the amendment to be filed.

4th. The court erred in holding that the complainant was not entitled to the benefit of the contract made between the city of Louisville and the sinking fund commissioners on the one hand and the banks and trust companies upon the other, the complainant having formally accepted the provisions of the Hewitt bill within the time allowed and having paid its taxes thereunder ever since, including the year 1887.

5th. The court erred in holding that the city attorney exceeded his authority in treating the complainant as one of the corporations

whose rights and claimed rights could be tested by the suit of The Louisville Banking Company *vs.* R. H. Thompson, police judge, &c.

6th. The court erred in holding that the complainant is not a bank and does not perform any public service.

HELM & BRUCE.
Sol. for Comptainant.

Bond above referred to is as follows:

Circuit Court of the United States, District of Kentucky.

FIDELITY TRUST & SAFETY VAULT COMPANY
vs.
CITY OF LOUISVILLE.

Know all men by these presents that we, The Fidelity Trust & Safety Vault Company, are held and firmly bound unto The City of Louisville in the sum of one thousand dollars, to be paid to the said City of Louisville, — executors or administrators; to which
35 payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 18th day of July, A. D. 1898.

Whereas the above-named Fidelity Trust and Safety Vault Company hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Louisville:

Now, therefore, the condition of this obligation is such that if the above-named Fidelity Trust and Safety Vault Company shall prosecute its said appeal to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

FIDELITY TRUST & SAFETY VAULT CO., [L. S.]
By JOHN STITES, *President.* [L. S.]
JOHN STITES. [L. S.]

Sealed and delivered in presence of—

HENRY F. CASSIN,
Deputy Clerk U. S. Circuit Court.

36 And on the 25th day of June, 1898, came the parties herein, by counsel, and filed their stipulation herein, which is as follows:

Circuit Court of the United States for the Sixth Circuit and District of Kentucky.

FIDELITY TRUST & SAFETY VAULT COMPANY, Complainant,
vs.
CITY OF LOUISVILLE, Defendants. } No. 6582.

By agreement of the parties hereto, no citation need be issued or served.

HELM & BRUCE,
Sol. for Compl't.
H. L. STONE, *City Att'y.*

37 DISTRICT OF KENTUCKY, *ss:*

I, Thomas Speed, clerk of the circuit court of the United States for the district of Kentucky, at Louisville, do hereby certify that the foregoing 36 pages contain a true and correct transcript of the record in the case mentioned in the caption hereof, as the same appears from the files and records in my said office.

Witness my hand and the seal of said circuit court this 10th day of August, A. D. 1898.

[Seal 6th Circuit Court, Ky. Dis., U. S. of America.]

THOS. SPEED, *Clerk*,
By HENRY F. CASSIN, *D. C.*

Endorsed on cover: Case No. 16,991. Kentucky C. C. U. S. Term No., 406. The Fidelity Trust & Safety Vault Company, appellant, *vs.* The City of Louisville. Filed September 15th, 1898.